

No. 8 of 2014.

Business Names Act 2014.

Certified on : **30 MAY 2014**



No. of 2014.

Business Names Act 2014.

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No. of 2014.

AN ACT

entitled

Business Names Act 2014,

Being an Act relating to Business Names,

MADE by National Parliament.

PART I. - PRELIMINARY.

1. INTERPRETATION.

(1) In this Act, unless the context otherwise requires -

“application” means the application made for the certificate of business name registration that is filed with the Registrar by any person or persons seeking to transact business under a business name;

“business” includes, engaging in wholesale or retail trade, the practice of a profession or occupation, soliciting or procuring business from a person in the country, and provision of services, whether or not for profit;

“business name” means a name other than the true name of a sole proprietor, partnership, firm, company, association, business group, other entity or unincorporated collection of persons or entities, under which it conducts business or holds itself out for business in the country, whether or not the business is conducted for profit;

“company” means any company formed or incorporated inside or outside the country, and registered with the Registrar under the *Companies Act 1997* (as amended);

“firm” means an unincorporated body of persons (whether consisting solely of individuals or of corporations or partly of individuals and partly of corporations) associated together for the purpose of carrying on business;

“initial” includes a recognised abbreviation of a given name;

“person” means a natural individual, partnership, incorporated company, incorporated association, incorporated business group, incorporated land group, and any other incorporated entity or unincorporated entity, joint venture or collection of natural individuals;

“registrant” means any person or persons that file an application for a certificate of business name registration and thereafter any person or persons listed on the certificate of business name registration as an owner of the business name;

“signature” means in relation to any document to be submitted to the Registrar, a tangible indication of assent to the document to which it is attached, which need not be an original ink signature on paper, it may consist of entry of the signer’s name in an electronic form or a faxed signature;

“the register” means the register of business names kept under this Act;

“the Registrar” means the Registrar of Companies;

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“this Act” includes the regulations made under this Act;

“true name” means -

- (a) for a natural person, a name that includes the full name or the first name (or initial thereof) and surname of the natural person; and
- (b) for a domestic company, the name as it appears on the current certificate of incorporation; and
- (c) for a foreign company, the name on the current certificate of registration; and
- (d) for an association, business group, partnership or other publicly registered entity, the name on the current registration document; and
- (e) for an unregistered partnership or other unregistered entity or association, a name that includes the name of every partner or member.

(2) For the purposes of this Act, a person shall not be regarded as carrying on business within the country for the reason only that within the country they -

- (a) are or become a party to an action or suit or an administrative or arbitration proceeding, or effect a settlement of an action, suit or proceeding or of a claim or dispute; or
- (b) maintain a bank account; or
- (c) effect a sale through an independent contractor; or
- (d) create evidence of a debt or creates a charge on property; or
- (e) secure or collect any of its debts or enforces its rights in regard to securities relating to his debts; or
- (f) conduct an isolated transaction that is completed within 31 days, not being one of a number of similar transactions repeated from time to time; or
- (g) invest any of its funds or holds property.

(3) For the purposes of this Act, a business name shall be deemed to be registered under this Act in relation to a person if it appears from the register that the person, alone or together with other persons, is carrying on business under that name.

2. BUSINESS NAMES PERMITTED.

(1) Any person or collection of persons may conduct business for profit or otherwise under a business name, so long as the registered business name to be registered:-

- (a) is not misleading, deceptive or offensive on its face; or
- (b) is not identical or almost identical to the name of another active local or foreign company, association, business group, or previously registered active business name or active reservation of name; or
- (c) the business name does not seriously mislead the public about the nature of the business.

(2) A person or persons may conduct business under more than one business name, provided that the use of multiple business names is not calculated to seriously mislead the public about the business it conducts.

3. CERTIFICATE OF BUSINESS NAME REGISTRATION.

(1) Any person or persons who intend to transact business in the country under a business name shall, before beginning to transact business under the name, obtain from the Registrar a certificate of business name registration.

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(2) A separate certificate of business name registration must be obtained for each business name used.

(3) The certificate of business name registration must list the business address for each location for which the exact same business name is being used.

(4) A separate certificate of business name registration is not required if the exact same business name is being used in multiple locations.

4. APPLICATION FOR BUSINESS NAME REGISTRATION.

(1) An application for a certificate of business name registration shall be submitted to the Registrar and shall be in the prescribed form and accompanied by the prescribed application fee.

(2) The application may be submitted in any medium permitted by the Registrar, including electronic media.

(3) The application shall include -

- (a) the business name as it is used in the transaction of business; and
- (b) the true name and residential address of each person who has an ownership or other control interest in the business to be transacted under the business name, provided -
 - (i) if the registrant is an entity registered with the Registrar, only the name and registration number must be indicated; or
 - (ii) if the registrant is a partnership or unregistered organisation, the true name and address of each partner and managing person must be indicated; and
- (c) identification of the registrant as a natural individual, partnership, incorporated company, incorporated association, incorporated business group, incorporated land group, any other incorporated entity or unincorporated entity, joint venture or other collection of natural individuals; and
- (d) the principal business address at which business is conducted under the business name. If there are additional addresses at which business is conducted under the same business name, all such addresses must be indicated; and
- (e) a general description of the type of business to be transacted under the business name; and
- (f) the date or proposed date of commencement of business in the country under the business name, which date may not be more than three months after the date of registration; and
- (g) the signature of an authorised person for the registrant.

5. EFFECT OF REGISTRATION.

(1) Upon receipt of a complete application for business name and upon receipt of the prescribed fee, the Registrar shall issue a certificate of business name registration in the prescribed form.

(2) Upon the issuance of a certificate of business name registration, the registrant may conduct business under the business name.

(3) The issuance of a certificate of business name registration does not relieve a registrant of any other obligation under the laws of Papua New Guinea.

(4) The issuance of a certificate of business name does not create a separate legal entity.

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6. BUSINESSES CARRIED ON BY OFFICIAL RECEIVERS, ETC.

Where a business operated under a business name is carried on -

- (a) by an official receiver; or
- (b) by a trustee in bankruptcy; or
- (c) by a trustee under a deed or a scheme of arrangement entered into under the law relating to bankruptcy; or
- (d) by a receiver, manager or other person appointed by a court, or under the powers contained in an instrument, to carry on the business,

for the purposes of this Act the business shall be deemed to be carried on by the person who carried on the business immediately before the appointment of the receiver, trustee, manager or other person.

7. CANCELLATION OF CERTIFICATE OF BUSINESS NAME.

- (1) A certificate of business name registration is effective from the time of registration unless -
 - (a) it is cancelled by registration with the Registrar of a notice of cancellation filed by the registrant on the prescribed form; or
 - (b) it is cancelled by action of the Registrar, as described in this Act.

(2) When the registrant fails to begin business within three months of the issuance of a certificate of business name registration or ceases to transact business under the business name, it must cancel the certificate of business name registration by registering a notice of cancellation that provides:-

- (a) the business name that is to be cancelled; and
- (b) the registration number of the certificate of business name to be cancelled; and
- (c) if business was transacted under the business name, the date on which the business name ceased to be used; and
- (d) the signature of the registrant or an authorised person for the registrant.

8. CANCELLATION BY REGISTRAR.

- (1) Where the Registrar has reasonable cause to believe that -
 - (a) a registrant is not carrying on business under the registered business name; or
 - (b) the information contained in a certificate of business name registration is inaccurate;or

the Registrar may send by post a notice addressed to the registrant at the place shown in the register as the principal place of business a notice inquiring;

- (c) the registrant is carrying on business under the business name; or
- (d) the information contained on the certificate of business name registration is inaccurate in any particulars,

stating that the registration of the business name shall be cancelled, unless the Registrar is satisfied within one month from the date of the notice that business is being carried on under that business name, or that inaccurate information contained on the certificate of business name registration has been corrected.

- (2) The Registrar -
 - (a) shall cancel a certificate of business name registration where the sole registrant is an incorporated company, association or business group and where such company, association or business group has been struck off or otherwise cancelled from any register of incorporated entities; and

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- (b) may, subject to Subsections (2) and (3), on any grounds that the Registrar deems sufficient, revoke a cancellation of certificate of business name registration and, in that event, the business name shall be deemed to have continued to be registered as if the registration had not been cancelled.
- (3) No revocation of a cancellation of business name may occur more than two years after the date of cancellation.
- (4) If during the period that a business name was cancelled another person registered an identical or almost identical name for a company, association, business group, or business name, then the registrant of the business name that was cancelled must select a new business name.
- (5) Where the certificate of business name registration has been cancelled under this section, a registrant for whom the business name was registered immediately before the cancellation may apply to the National Court for an order directing the Registrar to restore the certificate of business name registration.
- (6) If the National Court is satisfied that the applicant is carrying on business under the business name and that it is just and equitable to do so, it may make the order applied for on such terms as the Court thinks proper.
- (7) On the making of an order by the National Court under Subsection (5), the certificate of business name registration shall be deemed to have continued to be registered as though the registration had not been cancelled and the Registrar, on the lodging with the Registrar of an official copy of the order, shall make such entries and alterations in the register as the Registrar considers necessary for the purposes of the order.

9. EXPIRATION AND RENEWAL OF REGISTRATION.

- (1) Subject to this Act, the certificate of business name registration remains in force for a period of one year, but the registration may from time to time be renewed by lodging with the Registrar, at any time within the period of one month before the expiry of the registration, a statement of renewal in the prescribed form signed by an authorised person and accompanied by the prescribed fee.
- (2) Before the expiration of the certificate of business name, but not earlier than two months before the expiration, the Registrar may deliver to the registrant, at the place shown in the register as the principal place where business is carried on under that name, a notice of expiration containing the date on which the registration is due to expire.
- (3) Where the registrant has provided information to the Registrar allowing for communication from the Registrar by electronic means, then the notice described herein may be delivered by electronic means.
- (4) The failure by the Registrar to deliver a notice of expiration shall not relieve the registrant from the duty to file a statement of renewal.

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(5) Where the certificate of business name registration has expired, the Registrar shall not accept for registration from any person or persons, other than the registrant, a company, association, business group or business name that is identical with that cancelled business name, or that in the opinion of the Registrar so nearly resembles it as to be calculated to deceive, until the expiration of two months after the expiry of the certificate of business name registration.

10. AMENDMENT OF CERTIFICATE REQUIRED.

- (1) If -
 - (a) the identity or address of any registrant changes; or
 - (b) there is a change in any registrant who will carry on business under the business name; or
 - (c) any address at which business is conducted under the business name changes; or
 - (d) the certificate of business name registration becomes misleading in any other way,the registrant shall, within 10 working days thereafter, register an amendment of the certificate of business name registration in a form prescribed by the Registrar together with the prescribed fee.
- (2) The amendment of certificate shall include -
 - (a) the business name to which the amendment relates; and
 - (b) the registration number of the certificate of business name registration to be amended; and
 - (c) a statement of the respect in which the certificate of business name registration is to be amended; and
 - (d) the signature of the registrant or an authorised person for the registrant.
- (3) The form may be in any medium permitted by the Registrar, including electronic media.

11. CONSEQUENCES OF NONCOMPLIANCE WITH REGISTRATION REQUIREMENTS.

- (1) Noncompliance with the registration requirements of this Act shall be held to include, but not be limited to:-
 - (a) the failure to obtain a certificate of business name registration when required to do so; or
 - (b) providing or authorising the providing of false, misleading or incomplete information in an application for certificate of business name or amendment thereto; or
 - (c) the failure to amend a certificate of business name registration when required to do so.
- (2) Any person who transacts business in the country under a business name without having complied with the requirements of this Act shall not be entitled to maintain any legal action in the courts of this country until the person has obtained a certificate of business name registration.
- (3) Noncompliance with this Act does not operate to void an agreement, transaction or act of any person.
- (4) Any person who suffers a loss because of another person's noncompliance with the requirements of this Act shall be entitled to recover for their loss in the amount of the loss, and attorney fees and costs incurred in connection with recovery for the loss suffered.
- (5) When the Registrar reasonably determines that a person may be carrying on business in noncompliance with this Act, the Registrar shall send a notice to such person requiring them to cease and desist from carrying on business until such time as the person is in compliance with this Act.

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(6) A person is guilty of an offence if their noncompliance with this Act continues for more than ten (10) days after receipt of the notice from the Registrar, and upon conviction hereunder is liable to a fine not exceeding K100,000.00 or imprisonment for a term not exceeding six months, or both.

(7) A person is guilty of a separate offence if their noncompliance with this Act was intentionally committed to deceive or defraud the public in any manner.

(8) A person convicted of an offence under subsection (7) is liable to a fine not exceeding K200,000.00 or imprisonment for a term not exceeding two years, or both.

12. MAINTENANCE OF THE REGISTER.

(1) The Registrar shall have no duty to make judgments about the factual correctness of information in an application for a certificate of business name registration or amendment thereto, or in a notice of cancellation of certificate of business name registration.

(2) For each certificate of business name that is registered, the Registrar shall assign it a unique registration number and note the date and time of registration.

(3) For each notice of cancellation of business name registration or amendment thereto that is registered, the Registrar shall link it to the certificate to which it relates in the database of business names such that a person who searches the database for the business name will find an amendment or notice of cancellation with the certificate.

(4) The Registrar shall make information on certificates of business name registrations available to any person by whatever means the Registrar provides, which may include access to the database of business names via the internet.

(5) The Registrar shall index certificates of business name by the business name, by the true name(s) of the registrant and, if the registrant is an entity registered with the Registrar, by that entity's registration number.

(6) The Registrar, upon having reasonable cause to believe a particular filing is intended to deceive or defraud the public in any manner, may refuse to accept a particular filing required to be lodged under this Act unless the information specified in the statement is verified by a statutory declaration made by a person who signed the statement.

13. IMPROPER NAME REGISTRATION.

(1) Where a business name that could not be registered under this Act without contravention of Section 3 is registered through inadvertence or otherwise, the Registrar shall send by post a notice addressed to the registrant at the place shown in the register as the principal place where business is carried on under that name stating that the Registrar will cancel the registration of that name on the expiration of a period of not less than one month from the date of the notice.

(2) The registrant may file a certificate for a new business name or an amendment changing the improperly issued business name, and if the registrant fails to file an amendment, then the Registrar shall cancel the registration of that business name.

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(3) The Registrar shall forego any fee payable in respect of an application for the registration of a new business name or an amendment of the existing name for which a notice under Subsection (1) was delivered to the registrant.

14. REGISTRAR'S POWERS OF INSPECTION.

(1) The Registrar may, by written notice, require any person to furnish within a period of not less than one month as specified in such notice, or within such further period as the Registrar (before the expiration of that period) allows, such information as appears to the Registrar to be necessary to enable him to ascertain whether or not a person:-

- (a) is carrying on business alone or in association with other persons under a business name that has not been registered as required under this Act; or
- (b) has failed to lodge with the Registrar an amendment to an existing certificate of business name registration as required under this Act.

(2) A person required under Subsection (1) to furnish information to the Registrar who, within the period specified in the notice, or within such further period as the Registrar allows, fails to furnish such information as is within their power to furnish, or furnishes any information which to their knowledge is false or misleading, is guilty of an offence.

(3) A person convicted of an offence is liable to a fine not exceeding K100,000.00 or imprisonment for a term not exceeding six months, or both.

15. USE AND EXHIBITION OF BUSINESS NAME.

(1) Where a business name is registered under this Act, the registrant must ensure that the business name so registered shall be clearly stated:-

- (a) in every written communication sent by, or on behalf of, the business; and
- (b) in every document issued or signed by, or on behalf of, the business that evidences or creates a legal obligation of the registrant.

(2) The business name must at all times be displayed in a conspicuous position on the outside of every place at which business is carried on under that name.

(3) A registrant is guilty of an offence for noncompliance with this Section unless such registrant proves that they took reasonable steps to ensure compliance.

(4) A person convicted of an offence hereunder is liable to a fine not exceeding K100,000.00 or imprisonment for a term not exceeding six months, or both.

16. REGISTRAR MAY CORRECT ERRORS IN REGISTER, ETC.

(1) The Registrar may, on evidence which to him appears sufficient, correct an error in an entry in the register or in a certificate of business name registration.

(2) When correcting an error under Subsection (1), the Registrar shall not eliminate or render illegible the original words, and shall indicate in the register the date upon which the correction was made.

(3) An entry or certificate corrected under this section has the same validity and effect as though the error had not been made.

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(4) The Registrar may accept and register a statement lodged to correct an error in, or to supply a particular omitted from, a statement previously lodged and registered and, in that event, the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

17. INSPECTION OF THE REGISTER.

(1) A person may, on payment of any prescribed fee, inspect the register and may make a copy of any filing contained therein or obtain extracts from it.

(2) The Registrar may make the register or any part thereof available to the public via electronic means.

18. CERTIFICATES OF REGISTRATION OR NON-REGISTRATION.

(1) The Registrar shall, on request by a person and on payment of the prescribed fee, issue to that person -

- (a) a copy of or extract from the register, or a copy of or extract from a document forming part of the register, certified to be a true copy or extract; or
- (b) a certificate stating that a business name was or was not registered under this Act on a date or during a period specified in the certificate.

(2) The Registrar is not required to issue a copy, extract or certificate under Subsection (1) in respect of a statement or notice that has been destroyed under this Act or in respect of a date or a period ending on a date earlier by more than 12 years than the date of the receipt of the request.

19. EVIDENCE OF REGISTRATION OR NON-REGISTRATION.

A document purporting to be -

- (a) a certificate of business name registration issued under this Act; or
- (b) a copy of or extract from the register, or a copy of or extract from a document forming part of the register, issued under this Act; or
- (c) a certificate issued under this Act; or
- (d) a combination of two or more of the certificates, copies or extracts referred to in Paragraphs (a), (b) and (c),

is, in all courts and before all persons having authority to hear, receive and examine evidence, *prima facie* evidence of any matter contained or set out in the certificate, copy or extract.

20. AUTHORITY TO DESTROY DOCUMENTS.

The Registrar may, if in his opinion it is no longer necessary or desirable to retain it, destroy or dispose of any statement or notice lodged, filed, received or registered under this Act, where the registration of the business name or of the firm, individual or corporation, as the case may be, in respect of which the statement or notice was lodged, filed, received or registered has not been in force at any time during the preceding 7 years.

21. INVITATIONS TO THE PUBLIC TO MAKE DEPOSITS OR LOANS.

(1) Where a person is carrying on business in the country under a business name registered or required to be registered under this Act, a person who uses or makes reference to that business name in an invitation to the general public or in an advertisement inviting the general public to invest or deposit money with or lend money to that person or firm is guilty of an offence.

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(2) A person convicted of an offence under this Subsection (1) is liable to a fine not exceeding K200,000.00 or imprisonment for a term not exceeding two years, or both.

(3) This section does not apply to an invitation to the public made by a company in conformity with the requirements of the *Companies Act 1997* or with the *Securities Act 1998*.

22. PROCEEDINGS AGAINST PERSONS ACTING UNDER A NON-REGISTERED BUSINESS NAME.

(1) Subject to Subsection (2), proceedings may be taken and prosecuted in a court of competent jurisdiction against any person or persons carrying on business under a business name where the business name is not registered under this Act.

(2) In proceedings to which Subsection (1) applies -

(a) the name is, for the purpose of the proceedings, a sufficient designation of the person or persons referred to in that subsection in all writs, summonses, complaints and other legal documents and instruments; and

(b) a judgment obtained or order made may be enforced against that person, or against those persons or any of those persons, as the case may be.

(3) This section does not exempt a person from compliance with any provision of this Act.

23. OFFENCES COMMITTED BY CORPORATIONS.

Where a person guilty of an offence against this Act is -

(a) a corporation, including a company; or

(b) a person who purported to act for or on behalf of a corporation, including a company, a director, manager, secretary or other officer of the corporation who was knowingly a party to the offence is also guilty of the offence.

24. EVIDENTIARY PROVISIONS.

Where, in proceedings for an offence against this Act, proof is given that a business name has been displayed on any premises, and evidence is given from which the court may infer that the business name has reference to any business carried on at the premises, the person or persons carrying on business shall, in the absence of proof to the contrary, be deemed to be carrying on the business under the business name.

25. SERVICE OF NOTICES BY THE REGISTRAR.

(1) Where, by this Act, the Registrar is required or permitted to send a notice or other communication to the registrant or registrants, the notice or communication may be sent by post addressed to the registrant or registrants at the principal business address at which business is conducted under the business name.

(2) Where the registrant has provided information to the Registrar allowing for communication from the Registrar by electronic means, then any notice in this Act herein may be delivered by electronic means.

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26. SERVICE OF LEGAL DOCUMENTS.

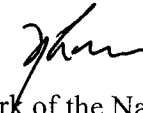
Service of writs, summonses, complaints and other legal documents and instruments on any registrant or registrants acting in such capacity under a business name registered under this Act shall be made in accordance with the National Court Rules and any other applicable law governing service of legal documents on the particular type of registrant to be served.

27. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing matters for or in relation to -


- (a) the fees to be paid to the Registrar under this Act, including additional fees for filings not made in a timely manner; and
- (b) the forms to be used under this Act; and
- (c) the duties of the Registrar for the purposes of this Act; and
- (d) generally the conduct and regulation of registration under this Act; and
- (e) the imposition of penalties and fines not exceeding K50,000.00 for offences against the regulations.

I hereby certify that the above is a fair print of the *Business Names Act 2014*, which has been made by the National Parliament.


Clerk of the National Parliament.

3 0 MAY 2014

I hereby certify that the *Business Names Act 2014* was made by the National Parliament on 19 February, 2014.


Speaker of the National Parliament.

3 0 MAY 2014